

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Internap Connectivity LLC
for Authority to operate as a Competitive
Provider of Limited Facilities-Based and
Resold Local Exchange and Interexchange
Telecommunications Services within the
State of California.

Application 12-07-025
(Filed July 26, 2012)

**DECISION GRANTING INTERNAP CONNECTIVITY LLC A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LIMITED
FACILITIES-BASED AND RESOLD LOCAL EXCHANGE SERVICE AND
INTEREXCHANGE SERVICE**

1. Summary

Pursuant to Public Utilities Code § 1001, we grant Internap Connectivity LLC a certificate of public convenience and necessity to provide limited facilities-based and resold local exchange telecommunications services and interexchange service in California subject to the terms and conditions set forth in the Ordering Paragraphs herein.

2. Background

On July 26, 2012, Internap Connectivity LLC (Internap), a limited liability corporation in California, filed an application for a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold local exchange telecommunications services in the service territories of Pacific Bell Telephone Company d/b/a AT&T California (AT&T), Verizon California Inc. (Verizon), Citizens Telecommunications Company of California, Inc.

(Citizens), and SureWest Communications¹ (SureWest) and interexchange service in California.

Internap proposes to provide local exchange services to businesses and other certificated carriers throughout California via a combination of its own facilities and either unbundled network elements or facilities obtained from incumbent local exchange carriers. In addition, Internap may offer resold local exchange and interexchange telecommunications services. Initially, Internap will offer limited facilities-based private line Metro Ethernet and similar high speed data services.

Internap's principal place of business is located at 1 Ravina Drive, Suite 1300, Atlanta, Georgia 30346.

There were no protests to Internap's application.

3. California Environmental Quality Act (CEQA)

The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Internap states that it does not intend to construct any facilities other than equipment to be installed in existing buildings or structures, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Before it can construct facilities other than equipment to be installed in existing buildings or structures, Internap must file for additional authority, and submit to any necessary CEQA review.

¹ SureWest was formerly known as Roseville Telephone Company.

4. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide limited facilities-based and resold local exchange and interexchange services must demonstrate that it has a minimum of \$100,000 cash or cash equivalent to meet the firm's start-up expenses.² An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers and/or interexchange carriers in order to provide the proposed service.³ In the application, Internap provided the annual report of Internap Network Services Corporation, its parent company, indicating that \$100,000 plus an amount equal to the deposit required by AT&T, Verizon, Citizens, and SureWest would be available to Internap for one year following certification. Since Internap has provided documentation that it possesses a minimum of \$100,000 that is reasonably liquid and available, it has demonstrated that it has sufficient funds to meet its start-up expenses and has fulfilled this requirement.

Internap states that it does not anticipate the need for deposits with AT&T, Verizon, Citizens, and SureWest, however, Internap Network Services Corporation's annual report demonstrates that it has sufficient cash to meet any deposit requirements of AT&T, Verizon, Citizens and SureWest.

Therefore, no additional resources are required at this time to cover deposits.

² The financial requirement for competitive local exchange carriers is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for non-dominant interexchange carriers is contained in D.91-10-041.

³ The requirement for competitive local carrier applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying local exchange carriers and/or interexchange carriers is set forth in D.95-12-056, Appendix C. For non-dominant interexchange carriers, the requirement is found in D.93-05-010.

5. Technical Qualifications

To be granted a CPCN for authority to provide local exchange and interexchange service, an applicant must make a reasonable showing of managerial and technical expertise in telecommunications or a related business. Internap supplied biographical information on its management in Section 13 of its application that demonstrated it has sufficient expertise and training to operate as a telecommunications provider.

In its application, Internap verified that no one associated with or employed by Internap as an affiliate, officer, director, partner, or owner of more than 10% of Internap was previously associated with a telecommunications carrier that filed for bankruptcy, was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order, or has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

For the above reasons, we find that Internap is in compliance with the requirements of D.95 12 056.

6. Tariffs

Internap proposes to offer services based on individual contracts with business customers and other competitive carriers on a non-discriminatory and individual case basis. Internap does not intend to offer residential service and therefore requests an exemption from the Commission's tariffing requirements pursuant to General Order 96-B, Telecommunications Industry Rule 5 (Rule 5).

Rule 5 provides that the Commission may grant “exceptions from the general requirement...that a Utility serve its California customers under its filed tariff.”

In D.07-09-018, the Commission established detariffing rules for carriers, including existing competitive local exchange carriers. Internap asserts that as a competitive local exchange carrier that does not provide residential services, its services are not price regulated and therefore fall into the category of services the Commission has deemed eligible for detariffing.

Internap’s intended services fall within the category of services eligible for detariffing.

For the reasons stated above we grant Internap’s request for detariffing.

7. Map of Service Territory

To be granted a CPCN for authority to provide local exchange service, an applicant must provide a map of the service territories it proposes to serve.⁴ In Exhibit 4 of its application, Internap provided a map of California to indicate the location of its proposed service territory, in compliance with this requirement.

8. Expected Customer Base

Internap provided its estimated customer base for the first and fifth years of operation in Exhibit 6 of its application.⁵ Therefore, Internap has complied with this requirement.

9. Request for Treatment as a Non-dominant Carrier

Internap requests treatment as a non-dominant interexchange carrier, which would include exemption from the requirements of Pub. Util.

⁴ D.95-12-056 at Appendix C, Rule 4.E.

⁵ Internap requested confidential treatment of the information in Exhibit 6.

Code §§ 816-830 concerning stocks and security and §§ 851-854 concerning the encumbrance and transfer of Internap property. The Commission detailed its rules regarding exemption of non-dominant carriers in D.85-01-008, which was subsequently modified in D.85-07-081 and D.85-11-044. We grant Internap's request for non-dominant interexchange carrier status, provided it follows all rules detailed in the above referenced decisions.⁶

10. Conclusion

We conclude that the application conforms to our rules for certification as a competitive local exchange and interexchange carrier. Accordingly, we grant Internap a CPCN to provide limited facilities-based and resold local exchange telecommunications service in the service territory of AT&T, Verizon, Citizens, and SureWest and interexchange service in California subject to compliance with the terms and conditions set forth in the Ordering Paragraphs.

11. Request to File Under Seal

Pursuant to Rule 11.4 of the Commission's Rules of Practice and Procedure, Internap has filed a motion for leave to file Exhibit 6 to the application under seal. Exhibit 6 contains information about the estimated customer base in year 1 and year 5. Internap represents that the information is sensitive, and disclosure could place Internap at an unfair business disadvantage. We have granted similar requests in the past and do so here.

12. Categorization and Need for Hearings

In Resolution ALJ 176-3298, dated July 31, 2012, the Commission preliminarily categorized this application as ratesetting, and preliminarily

⁶ While the Commission has granted exemption from §§ 816 – 830 to others, exemption

Footnote continued on next page

determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

13. Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

14. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Linda A. Rochester is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on July 31, 2012. No protests have been filed. A hearing is not required.
2. The Commission is the Lead Agency for this project under CEQA.
3. Internap states that it does not intend to construct any facilities other than equipment to be installed in existing buildings or structures.
4. Internap's authority to provide local exchange services will not have a significant adverse effect upon the environment.
5. Internap has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

from §§ 851 – 854 has not been granted previously and is not granted here.

6. Internap has sufficient additional cash or cash equivalent to cover deposits that may be required by other telecommunications carriers in order to provide the proposed service.

7. Internap's management possesses sufficient experience, knowledge, and technical expertise to provide local exchange services to the public.

8. No one associated with or employed by Internap as an affiliate, officer, director, partner, or owner of more than 10% of Internap: was previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunications carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations.

9. Internap will not provide residential service as a competitive local exchange carrier and pursuant to General Order 96-B, Telecommunications Rule 5 is therefore eligible for exemption from the Commission's tariff requirements.

10. Internap provided a map of the location of its proposed service territory.

11. Internap provided an estimate of its customer base for the first and fifth year of operation.

12. Pursuant to Rule 11.4, Internap filed a motion for leave to file Exhibit 6 as confidential materials under seal.

Conclusions of Law

1. Internap should be granted a CPCN to provide resold and limited facilities-based local exchange telecommunications service in the service

territories of AT&T, Verizon, Citizens, and SureWest and interexchange service in California, and interexchange service throughout California subject to the terms and conditions set forth in the Ordering Paragraphs herein.

2. Internap, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

3. Internap should be exempt from the Commission's tariff requirements pursuant to General Order 96-B, Telecommunications Industry Rule 5.

4. Internap's motion to file Exhibit 6 to the application under seal should be granted for two years.

5. Internap should be granted non-dominant carrier status, subject to Commission rules and regulations as detailed in D.85-01-008 and modified in D.85-07-081 and D.85-11-044.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Internap Connectivity LLC (Internap) to provide limited facilities-based and resold local exchange telecommunications services in the territories of Pacific Bell Telephone d/b/a AT&T California, Verizon California Inc., Citizens Telecommunications Company of California, Inc. and SureWest Communications, and interexchange service in California subject to the terms and conditions set forth below.

2. Internap is granted an exemption from the Commission's tariffing requirements.

3. The corporate identification number assigned to Internap, U-7246-C, must be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

4. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Attachments B, C, and D to this decision, Internap is subject to the Consumer Protection Rules contained in General Order 168, and all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

5. Internap must file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

6. Internap must annually pay the user fee and public programs surcharges regularly if the amount due is \$0. Instructions on the remittance and payment of surcharges and user fees are provided in Attachment B. Under Public Utilities Code § 405, carriers that are in default of reporting and submitting user fees for a period of 30 days or more will be subject to penalties including suspension or revocation of their authority to operate in California. Therefore, carriers should report user fees even if the amount due is \$0.

7. Prior to initiating service, Internap must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.

8. Internap must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Internap must file an affiliate transaction report with the Director of the Communications Division, in compliance with Decision 93-02-019, on a calendar year basis using the form contained in Attachment D.

10. Internap must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. Internap's motion to file Exhibit 6 under seal is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by Internap or as ordered by a court of competent jurisdiction. If Internap believes that it is necessary for this information to remain under seal for longer than two years, Internap may file a new motion at least 30 days before the expiration of this limited protective order.

12. Application 12-07-025 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

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(END OF ATTACHMENT A)

ATTACHMENT B

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND INTEREXCHANGE CARRIERS

1. Applicant must file, **in this docket with reference to this decision number**,¹ a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. All carriers authorized by this Commission to operate in California are required to assess surcharges and user fees on their end-user intrastate service revenue, and must comply with the reporting and payment filing requirements in accordance with the directions of the Commission.

Internap Connectivity LLC is subject to the following fees and telephone surcharges that must be filed and remitted on a regular basis, even if the amount due is zero.

- a. The Universal Lifeline Telephone Service Trust
Administrative Committee Fund (Pub. Util. Code § 879);
- b. The California Relay Service and Communications Devices
Fund (Pub. Util. Code § 2881; D.98-12-073);
- c. The California High Cost Fund-A (Pub. Util. Code § 739.3;
D.96-10-066, at 3-4, App. B, Rule 1.C);
- d. The California High Cost Fund-B (D.96-10-066, at 191,
App. B, Rule 6.F.; D.07-12-054);
- e. The California Advanced Services Fund (D.07-12-054);
- f. The California Teleconnect Fund (D.96-10-066, at 88,
App. B, Rule 8.G).
- g. The User Fee provided in Pub. Util. Code §§ 431-435.

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant must check the joint tariff for surcharges and fees filed by Pacific Bell Telephone Company (dba AT&T California) and apply the current surcharge and fee amounts in that joint tariff on

¹ **Written acceptance filed in this docket does not reopen the proceeding.**

end-user bills until further revised. Current and historical surcharge rates can be found at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

- Carriers must report and remit CPUC telephone program surcharges online using the CPUC Telecommunications and User Fees Filing System (TUFFS). Information and instructions for online reporting and payment of surcharges are available at <http://www.cpuc.ca.gov/PUC/Telco/Information+for+providing+service/Surcharge+Remittance.htm>. To request a user ID and password for TUFFS online filing and for questions, please e-mail Telco_surcharges@cpuc.ca.gov.
 - Carriers must file and pay the PUC User Fee (see item 2g above) upon receiving the User Fee statement sent by the Commission. User Fees cannot be reported or paid online. Instructions for reporting filing are available at <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information?userfee.htm>. Please call (415) 703-2470 for questions regarding User Fee reporting and payment.
3. Prior to initiating service, Applicant must provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information must be updated if the name or telephone number changes, or at least annually.
 4. Applicant must notify the Director of the Communications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.
 5. Applicant must notify the Director of the Communications Division in writing of the date local service is first rendered to the public within five days after service begins.
 6. Applicant must keep its books and records in accordance with the Generally Accepted Accounting Principles.

7. In the event Applicant's books and records are required for inspection by the Commission or its staff, it must either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.
8. Applicant must file an annual report with the Director of the Communications Division, in compliance with General Order 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.
9. Applicant must file an affiliate transaction report with the Director of the Communications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.
10. Applicant must ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.
11. Within 60 days of the effective date of this order, Applicant must comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Communications Division in writing of its compliance.
12. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, and has not received written permission from the Communications Division to file or remit late, the Communications Division must prepare for Commission consideration a resolution that revokes Applicant's Certificate of Public Convenience and Necessity.
13. Applicant is exempt from Rule 3.1(b) of the Commission Rules of Practice and Procedure
14. Applicant is exempt from Pub. Util. Code §§ 816-830.
15. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.
16. If Applicant decides to discontinue service or file for bankruptcy, it must immediately notify the Communications Division's Bankruptcy Coordinator.
17. Applicant must send a copy of this decision to concerned local permitting agencies no later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C

ATTACHMENT C**ANNUAL REPORT**

An original and a machine readable, copy using Microsoft Word or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Pub. Util. Code §§ 2107 and 2108.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.

11. Income statement for California operations for the calendar year for which information is submitted.
12. Cash Flow statement as of December 31st of the calendar year for which information is submitted, for California operations only.
13. For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D

ATTACHMENT D

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

An original and a machine readable, copy using Microsoft Word and Excel, or compatible format must be filed with the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than May 1st of the year following the calendar year for which the annual report is submitted.

1. Each utility must list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the Annual Affiliate Transaction Report.
 - Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
 - Brief description of business activities engaged in;
 - Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
 - Ownership of the utility (including type and percent ownership);
 - Voting rights held by the utility and percent; and
 - Corporate officers.
2. The utility must prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart must have the controlling corporation (if any) at the top of the chart, the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart, and all secondary subsidiaries and affiliates (e.g., a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary must be clearly noted.
3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's Annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)